

APRIL 9, 1987

CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 509
 2 INTRODUCED BY Schuyler B. Lewis
 3 BY REQUEST OF THE AERONAUTICS DIVISION OF THE
 4 DEPARTMENT OF COMMERCE
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE
 7 OPERATION OF AN AIRCRAFT BY A PERSON UNDER THE INFLUENCE OF
 8 ALCOHOL OR DRUGS; PROVIDING BLOOD ALCOHOL STANDARDS;
 9 AMENDING SECTION 67-1-204, MCA; AND PROVIDING AN IMMEDIATE
 10 EFFECTIVE DATE."
 11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 67-1-204, MCA, is amended to read:

14 "67-1-204. Lawfulness of flight and landings. (1)
 15 Flight in aircraft over the lands and waters of this state
 16 is lawful, unless at such a low altitude as to interfere
 17 with the then-existing use to which the land or water or the
 18 space over the land or water is put by the owner or unless
 19 so conducted as to be imminently dangerous to persons or
 20 property lawfully on the land or water or in violation of
 21 the air commerce regulations which have been or may be
 22 promulgated by the department of commerce of the United
 23 States.

24 (2) Aircraft landings and takeoffs from the public
 25 waters of this state are lawful if proper safety precautions

1 regarding public waters, as prescribed in Title 14, part 91,
 2 Code of Federal Regulations, are taken prior to such landing
 3 or takeoff, except as otherwise provided by this section.

4 (3) Aircraft landings and takeoffs from public roads
 5 in this state are lawful if proper safety precautions, as
 6 approved by the governing jurisdiction of such roads, are
 7 taken prior to such landing or takeoff, except as otherwise
 8 provided in this section. However, the local governing
 9 jurisdiction shall incur no liability as a result of an
 10 approval under this subsection.

11 (4) No person shall operate an aircraft, as pilot
 12 thereof, either in the air, on the water, or on the ground,
 13 in a careless or reckless manner so as to endanger the life
 14 or property of others, including the aircraft being operated
 15 and passengers carried therein.

16 (5) The willful and malicious use of aircraft in
 17 stunting or diving over livestock in a manner calculated to
 18 frighten or stampede them shall be deemed an unlawful use
 19 thereof, and actual and punitive damages, in addition to the
 20 penalties provided by this part, may be recovered in an
 21 action for damages caused therefrom.

22 (6) The landing of an aircraft on the private lands or
 23 waters of another without his consent is unlawful, except in
 24 the case of a forced landing. For damages caused by a forced
 25 landing, however, the owner or lessee of the aircraft or the



1 pilot shall be liable for actual damage caused by such
2 forced landing.

3 (7) No person may knowingly operate or be in actual
4 physical control of an aircraft while under the influence of
5 alcohol or drugs."

6 NEW SECTION. Section 2. Blood alcohol concentration
7 standards -- evidence admissible -- administration of tests.

8 (1) Pursuant to 14 C.F.R. 91.11, if a person acting or
9 attempting to act as a crewmember of a civil aircraft has a
10 blood alcohol concentration of 0.04% by weight or more as
11 defined in 61-8-407, that person is presumed to be under the
12 influence of alcohol in violation of 67-1-204.

13 (2) Evidence of the amount of alcohol in a person's
14 blood at the time of the act alleged under subsection (1)
15 and any other competent evidence bearing on the question of
16 whether the person was under the influence of alcohol at the
17 time of the act alleged is admissible in any criminal action
18 or proceeding arising out of acts alleged to have been
19 committed in violation of 67-1-204.

20 (3) In any criminal action or proceeding arising out
21 of acts alleged to have been committed in violation of
22 67-1-204, the court or jury may consider federal regulations
23 governing aeronautics.

24 (4) If a person charged with violation of 67-1-204
25 refuses to submit to a chemical test of his blood, breath,

1 or urine for the purpose of determining the alcohol content
2 of his blood, none will be given, but proof of refusal is
3 admissible in any criminal action or proceeding arising out
4 of acts alleged to have been committed in violation of
5 67-1-204.

6 (5) The provisions relating to administration of tests
7 provided in 61-8-405 and the definition of alcohol
8 concentration provided in 61-8-407 apply to any testing done
9 to determine the blood alcohol concentration of a person
10 charged with violation of 67-1-204.

11 NEW SECTION. Section 3. Extension of authority. Any
12 existing authority of the department of commerce to make
13 rules on the subject of the provisions of this act is
14 extended to the provisions of this act.

15 NEW SECTION. Section 4. Codification instruction.
16 Section 2 is intended to be codified as an integral part of
17 Title 67, chapter 1, part 2, and the provisions of Title 67,
18 chapter 1, part 2, apply to section 2.

19 NEW SECTION. Section 5. Effective date. This act is
20 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 509
2 INTRODUCED BY SCHYE, BRANDEWIE
3 BY REQUEST OF THE AERONAUTICS DIVISION OF THE
4 DEPARTMENT OF COMMERCE
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE
7 OPERATION OF AN AIRCRAFT BY A PERSON UNDER THE INFLUENCE OF
8 ALCOHOL OR DRUGS; PROVIDING BLOOD ALCOHOL STANDARDS;
9 AMENDING SECTION 67-1-204, MCA; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE."
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13 Section 1. Section 67-1-204, MCA, is amended to read:
14 "67-1-204. Lawfulness of flight and landings. (1)
15 Flight in aircraft over the lands and waters of this state
16 is lawful, unless at such a low altitude as to interfere
17 with the then-existing use to which the land or water or the
18 space over the land or water is put by the owner or unless
19 so conducted as to be imminently dangerous to persons or
20 property lawfully on the land or water or in violation of
21 the air commerce regulations which have been or may be
22 promulgated by the department of commerce TRANSPORTATION of
23 the United States.
24 (2) Aircraft landings and takeoffs from the public
25 waters of this state are lawful if proper safety precautions

1 regarding public waters, as prescribed in Title 14, part 91,
2 Code of Federal Regulations, are taken prior to such landing
3 or takeoff, except as otherwise provided by this section.
4 (3) Aircraft landings and takeoffs from public roads
5 in this state are lawful if proper safety precautions, as
6 approved by the governing jurisdiction of such roads, are
7 taken prior to such landing or takeoff, except as otherwise
8 provided in this section. However, the local governing
9 jurisdiction shall incur no liability as a result of an
10 approval under this subsection.
11 (4) No person shall operate an aircraft, as pilot
12 thereof, either in the air, on the water, or on the ground,
13 in a careless or reckless manner so as to endanger the life
14 or property of others, including the aircraft being operated
15 and passengers carried therein.
16 (5) The willful and malicious use of aircraft in
17 stunting or diving over livestock in a manner calculated to
18 frighten or stampede them shall be deemed an unlawful use
19 thereof, and actual and punitive damages, in addition to the
20 penalties provided by this part, may be recovered in an
21 action for damages caused therefrom.
22 (6) The landing of an aircraft on the private lands or
23 waters of another without his consent is unlawful, except in
24 the case of a forced landing. For damages caused by a forced
25 landing, however, the owner or lessee of the aircraft or the

1 pilot shall be liable for actual damage caused by such
2 forced landing.

3 (7) No person may knowingly operate, ATTEMPT TO
4 OPERATE, or be in actual physical control of an aircraft
5 while under the influence of alcohol or drugs. "UNDER THE
6 INFLUENCE" MEANS THAT AS A RESULT OF TAKING INTO THE BODY
7 ALCOHOL, DRUGS, OR ANY COMBINATION THEREOF A PERSON'S
8 ABILITY TO SAFELY OPERATE THE AIRCRAFT HAS BEEN DIMINISHED
9 TO THE SLIGHTEST DEGREE."

10 NEW SECTION. Section 2. Blood alcohol concentration
11 standards -- evidence admissible -- administration of tests.

12 (1) Pursuant--to--14-C.F.R.--91.117--if IF a person acting or
13 attempting to act as a crewmember of a civil aircraft has a
14 blood alcohol concentration of 0.04% by weight or more as
15 defined in 61-8-407, that person is presumed to be under the
16 influence of alcohol in violation of 67-1-204.

17 (2) Evidence of the amount of alcohol in a person's
18 blood at the time of the act alleged under subsection (1)
19 and any other competent evidence bearing on the question of
20 whether the person was under the influence of alcohol at the
21 time of the act alleged is admissible in any criminal action
22 or proceeding arising out of acts alleged to have been
23 committed in violation of 67-1-204.

24 (3) In any criminal action or proceeding arising out
25 of acts alleged to have been committed in violation of

1 67-1-204, the court or jury may consider federal regulations
2 governing aeronautics.

3 (4) If a person charged with violation of 67-1-204
4 refuses to submit to a chemical test of his blood, breath,
5 or urine for the purpose of determining the alcohol content
6 of his blood, none will be given, but proof of refusal is
7 admissible in any criminal action or proceeding arising out
8 of acts alleged to have been committed in violation of
9 67-1-204.

10 (5) The provisions relating to administration of tests
11 provided in 61-8-402 AND 61-8-405 and the definition of
12 alcohol concentration provided in 61-8-407 apply to any
13 testing done to determine the blood alcohol concentration of
14 a person charged with violation of 67-1-204.

15 NEW SECTION. Section 3. Extension of authority. Any
16 existing authority of the department of commerce to make
17 rules on the subject of the provisions of this act is
18 extended to the provisions of this act.

19 NEW SECTION. Section 4. Codification instruction.
20 Section 2 is intended to be codified as an integral part of
21 Title 67, chapter 1, part 2, and the provisions of Title 67,
22 chapter 1, part 2, apply to section 2.

23 NEW SECTION. Section 5. Effective date. This act is
24 effective on passage and approval.

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24 (2) Aircraft landings and takeoffs from the public
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9 jurisdiction shall incur no liability as a result of an
10 approval under this subsection.

11 (4) No person shall operate an aircraft, as pilot
12 thereof, either in the air, on the water, or on the ground,
13 in a careless or reckless manner so as to endanger the life
14 or property of others, including the aircraft being operated
15 and passengers carried therein.

16 (5) The willful and malicious use of aircraft in
17 stunting or diving over livestock in a manner calculated to
18 frighten or stampede them shall be deemed an unlawful use
19 thereof, and actual and punitive damages, in addition to the
20 penalties provided by this part, may be recovered in an
21 action for damages caused therefrom.

22 (6) The landing of an aircraft on the private lands or
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24 the case of a forced landing. For damages caused by a forced
25 landing, however, the owner or lessee of the aircraft or the

1 pilot shall be liable for actual damage caused by such
2 forced landing.

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11 standards -- evidence admissible -- administration of tests.

12 (1) Pursuant--to--14-CP-R-91117--if IF a person acting or
13 attempting to act as a crewmember of a civil aircraft has a
14 blood alcohol concentration of 0.04% by weight or more as
15 defined in 61-8-407, that person is presumed to be under the
16 influence of alcohol in violation of 67-1-204.

17 (2) Evidence of the amount of alcohol in a person's
18 blood at the time of the act alleged under subsection (1)
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20 whether the person was under the influence of alcohol at the
21 time of the act alleged is admissible in any criminal action
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25 of acts alleged to have been committed in violation of

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3 (4) If a person charged with violation of 67-1-204
4 refuses to submit to a chemical test of his blood, breath,
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 12 thereof, either in the air, on the water, or on the ground,
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 18 frighten or stampede them shall be deemed an unlawful use
 19 thereof, and actual and punitive damages, in addition to the
 20 penalties provided by this part, may be recovered in an
 21 action for damages caused therefrom.

22 (6) The landing of an aircraft on the private lands or
 23 waters of another without his consent is unlawful, except in
 24 the case of a forced landing. For damages caused by a forced
 25 landing, however, the owner or lessee of the aircraft or the



1 pilot shall be liable for actual damage caused by such
2 forced landing.

3 (7) No person may knowingly operate, ATTEMPT TO
4 OPERATE, or be in actual physical control of an aircraft
5 while under the influence of alcohol or drugs. "UNDER THE
6 INFLUENCE" MEANS THAT AS A RESULT OF TAKING INTO THE BODY
7 ALCOHOL, DRUGS, OR ANY COMBINATION THEREOF A PERSON'S
8 ABILITY TO SAFELY OPERATE THE AIRCRAFT HAS BEEN DIMINISHED
9 TO THE SLIGHTEST DEGREE.

10 (8) A PERSON HAVING INFORMATION REGARDING A VIOLATION
11 OF SUBSECTION (7) SHALL REPORT SUCH INFORMATION TO THE
12 DEPARTMENT."

13 SECTION 2. SECTION 67-1-205, MCA, IS AMENDED TO READ:

14 "67-1-205. Penalties. A person who violates any
15 provision of this part, except 67-1-204(8), shall be guilty
16 of a misdemeanor and punishable by a fine of not more than
17 \$500 or by imprisonment for not more than 6 months, or
18 both."

19 NEW SECTION. Section 3. Blood alcohol concentration
20 standards -- evidence admissible -- administration of tests.

21 ~~(1) Pursuant to 14-C.F.R.-91.117-if~~ IF a person acting or
22 attempting to act as a crewmember of ~~a-civil~~ AN aircraft has
23 a blood alcohol concentration of 0.04% by weight or more as
24 defined in 61-8-407, that person is CONCLUSIVELY presumed to
25 be under the influence of alcohol OR DRUGS AND IS in

1 violation of 67-1-204.

2 (2) Evidence of the amount of alcohol in a person's
3 blood at the time of the act alleged under subsection (1)
4 and any other competent evidence bearing on the question of
5 whether the person was under the influence of alcohol at the
6 time of the act alleged is admissible in any criminal action
7 or proceeding arising out of acts alleged to have been
8 committed in violation of 67-1-204.

9 (3) In any criminal action or proceeding arising out
10 of acts alleged to have been committed in violation of
11 67-1-204, the court or jury may consider federal regulations
12 governing aeronautics.

13 (4) A PERSON WHO OPERATES AN AIRCRAFT OVER THE LANDS
14 AND WATERS OF THIS STATE IS CONSIDERED TO HAVE GIVEN CONSENT
15 TO A CHEMICAL TEST OF HIS BLOOD, BREATH, OR URINE FOR THE
16 PURPOSE OF DETERMINING THE ALCOHOL OR DRUG CONTENT OF HIS
17 BLOOD IF ARRESTED BY A PEACE OFFICER FOR OPERATING,
18 ATTEMPTING TO OPERATE, OR BEING IN ACTUAL PHYSICAL CONTROL
19 OF AN AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR
20 DRUGS. THE TEST MUST BE ADMINISTERED AT THE DIRECTION OF A
21 PEACE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE THE
22 PERSON WAS OPERATING, ATTEMPTING TO OPERATE, OR IN ACTUAL
23 PHYSICAL CONTROL OF AN AIRCRAFT WHILE UNDER THE INFLUENCE OF
24 ALCOHOL OR DRUGS. THE ARRESTING OFFICER MAY DESIGNATE WHICH
25 ONE OF THE AFORESAID TESTS MUST BE ADMINISTERED. A PERSON

1 WHO IS UNCONSCIOUS OR WHO IS OTHERWISE IN A CONDITION
2 RENDERING HIM INCAPABLE OF REFUSAL IS CONSIDERED NOT TO HAVE
3 WITHDRAWN THE CONSENT PROVIDED BY THIS SUBSECTION.

4 {4}(5) If a person charged with violation of 67-1-204
5 refuses to submit to a chemical test of his blood, breath,
6 or urine for the purpose of determining the alcohol content
7 of his blood, none will be given, but proof of refusal is
8 admissible in any criminal action or proceeding arising out
9 of acts alleged to have been committed in violation of
10 67-1-204.

11 {5}(6) The provisions relating to administration of
12 tests provided in ~~61-8-402-AND~~ 61-8-405 and the definition
13 of alcohol concentration provided in 61-8-407 apply to any
14 testing done to determine the blood alcohol concentration of
15 a person charged with violation of 67-1-204.

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17 existing authority of the department of commerce to make
18 rules on the subject of the provisions of this act is
19 extended to the provisions of this act.

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21 Section ~~2~~ 3 is intended to be codified as an integral part
22 of Title 67, chapter 1, part 2, and the provisions of Title
23 67, chapter 1, part 2, apply to section ~~2~~ 3.

24 NEW SECTION. Section 6. Effective date. This act is
25 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

March 23 19 87

SENATE JUDICIARY

HB 509
Page 2

March 23 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 509

Third ~~XXXX~~ reading copy (blue)
color

Prohibit the operation of an aircraft while under influence of alcohol/ drugs.
Schye (Pinsoneault)

Respectfully report as follows: That HOUSE BILL No. 509

1. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "67-1-204"
Insert: "AND 67-1-205"

2. Page 3, line 10.
Following: line 9
Insert: "(8) A person having information regarding a violation of subsection (7) shall report such information to the department.

Section 2. Section 67-1-205, MCA, is amended to read:
"67-1-205. Penalties. A person who violates any provision of this part, except 67-1-204(8), shall be guilty of a misdemeanor and punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both."

Renumber: subsequent sections

3. Page 3, line 13.
Following: "of"
Strike: "a civil"
Insert: "an"

4. Page 3, line 15.
Following: "is"
Insert: "conclusively"

5. Page 3, line 16.
Following: "alcohol"
Insert: "or drugs and is"

6. Page 4, line 3.
Following: line 2
Insert: "(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a chemical test of his blood, breath, or urine for the purpose of determining the alcohol or drug content of his blood if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol or drugs. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol or drugs. The arresting officer may designate which one of the aforesaid tests must be administered. A person who is unconscious or who is otherwise in a condition rendering him incapable of refusal is considered not to have withdrawn the consent provided by this subsection."

Renumber: subsequent subsections

7. Page 4, line 11.
Strike: "61-8-402 AND"

~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~

8. Page 4, line 20.
Strike: "2"
Insert: "3"

9. Page 4, line 22.
Following: "section"
Strike: "2"
Insert: "3"

AND AS AMENDED
BE CONCURRED IN

MM

XXXXXX

XXXXXXXXXXXX

CONTINUED

J. Mazurek
XXXXXX Senator Mazurek Chairman

J. Mazurek
Senator Mazurek